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January 14, 2002

**Via Electronic Filing With Attachments**

Ms. Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Twelfth Street, Lobby, TW-A325  
Washington, DC 20554

Re: Ex Parte Notice  
CS Docket Number 01-348

Dear Ms. Salas:

On Friday, January 11, 2002, B. Robert Phillips, President and Chief Executive Officer, Steven Berman, Senior Vice President, Business Affairs and General Counsel, and Adam Schwartz, Vice President Government Relations of our client, the National Rural Telecommunications Cooperative (NRTC), met with W. Kenneth Ferree, Cable Bureau Chief, and the members of the Commission's Merger Review Team listed below to discuss NRTC's opposition to the proposed merger of EchoStar Communications, Inc. (EchoStar) and DIRECTV, Inc. Stephen M. Ryan and Robert J. Rini from Manatt, Phelps and Phillips, LLP, and the undersigned attended the meeting on behalf of NRTC.

Copies of the attached one-page handout entitled "Rural Concerns with EchoStar/DIRECTV Merger," were distributed during the meeting and served as the basis for our discussions. We also distributed copies of and discussed the attached map from a recent New York Times article, entitled "Housing Units With Access to Cable."<sup>1</sup>

Lastly, we discussed a recent interview with EchoStar CEO Charles Ergen in the Satellite Business News,<sup>2</sup> including comments by Mr. Ergen that only three million homes in the United States do not have access to cable. We also discussed his comments to the effect that his proposed

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<sup>1</sup> *Look, Up in the Sky! Big Bets on a Big Deal*, N.Y. Times, October 30, 2001, at C-1.

<sup>2</sup> *Ergen Makes his Case*, Satellite Business News, December 21, 2001, at 1.


Ms. Magalie Roman Salas  
January 14, 2002  
Page 2

**KELLER AND HECKMAN LLP**

“National Pricing” plan would need to be flexible enough to respond to cable rebates and promotions at the local level.

Should you have any questions, or require any additional information, please feel free to contact the undersigned.

Sincerely,



Jack Richards

cc: W. Kenneth Ferree  
Barbara Esbin  
Julius Knapp  
JoAnn Lucanik  
Royce Dickens Sherlock  
Donald Stockdale  
Doug Webbink  
Robert Nelson  
Neil A. Dellar  
Marcia A. Glauberman  
James R. Bird  
David Sappington  
Marilyn J. Simon  
Joel Rabinovitz  
Clarence Bush  
John Berresford

## **Rural Concerns with EchoStar/DIRECTV Merger**

The National Rural Telecommunications Cooperative is a non-profit cooperative comprised of more than 1,000 rural utilities and affiliates located in 46 states. In 1992, NRTC and its members invested more than \$100 million toward launching DIRECTV as part of NRTC's mission to bring state-of-the-art telecommunications services to rural Americans. Today, NRTC's members and affiliates serve more than 1.8 million rural consumers, nearly 20% of all DIRECTV subscribers.

**NO MVPD COMPETITION.** EchoStar and DIRECTV compete with each other throughout the country based on programming, price and service. In areas not passed by cable, the merger would eliminate MVPD competition by creating a DBS satellite monopoly. (C Band, MMDS, SMATV, and terrestrial wireless services are inadequate substitutes for DBS.)

**MORE "HOMES NOT PASSED."** Although EchoStar claims that only 3.3% of homes are not passed by cable, in fact up to 20% of U.S. households -- 25 million homes -- may not have access to cable. In as many as 22 states, more than 30% of homes may not be passed by cable. These numbers would be higher if only digital cable were counted.

**NO MVPD CHOICE.** In all homes not passed by cable, there would be no MVPD choice other than the satellite monopoly. All of these homes would see only what the merged entity decided to show. If any of these homes were dissatisfied with the equipment, installation, service quality, program packages, pricing or billing practices of the merged entity, they would have no alternative provider from which to receive service.

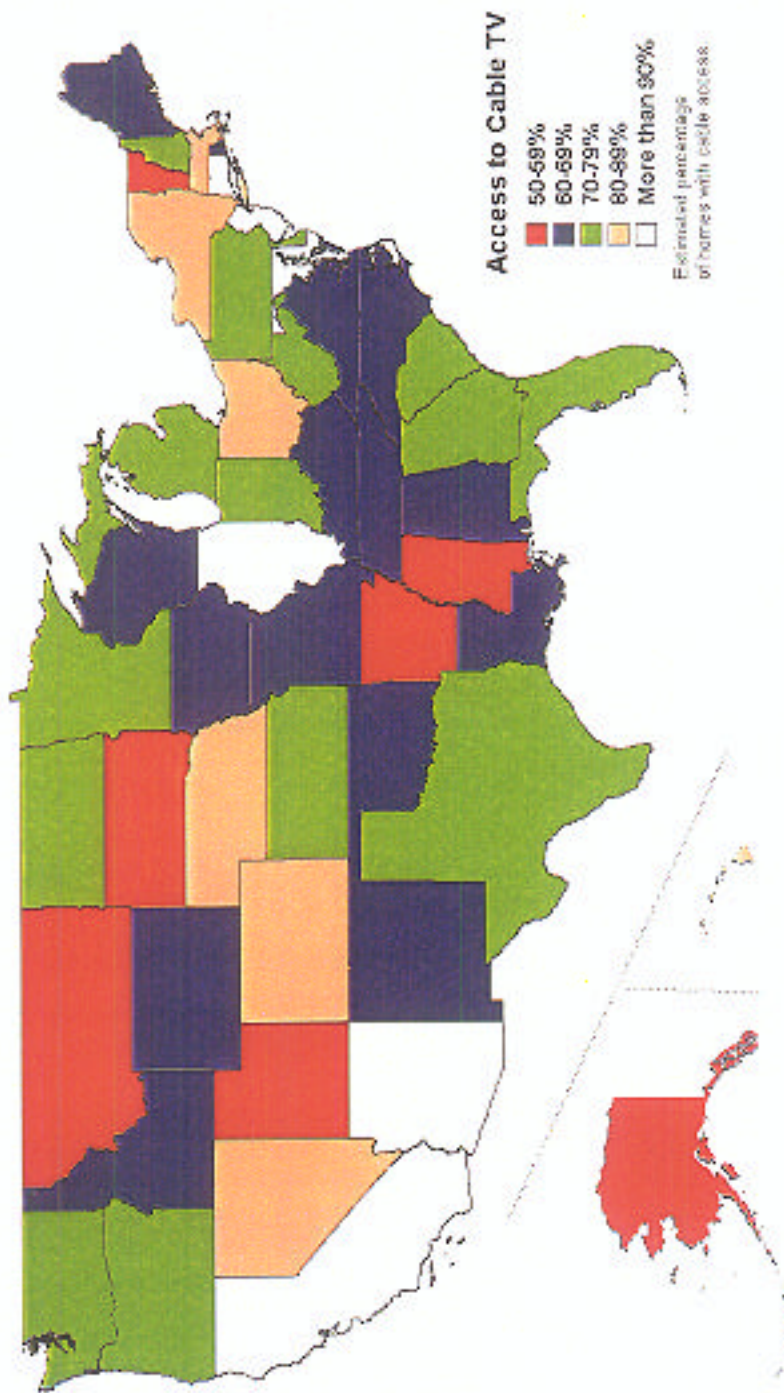
**LESS INNOVATION.** Continued competition -- not monopoly -- is the best incentive for EchoStar and DIRECTV to offer new niche, educational or specialty services, including high definition and interactive programming..

**LESS LOCAL TV.** Local-into-local service can be provided by both EchoStar and DIRECTV to more markets with existing technology sooner and with less cost than the set-top box change-out required if the companies merge.

**NATIONAL PRICING WILL NOT WORK.** EchoStar's and DIRECTV's promise of "national pricing" is no substitute for competition in rural America. Even if the promise were enforceable (which it is not), rural Americans with no other choice in service provider would still be subject to monopoly service and pricing and could still end up subsidizing urban subscribers.

**NO BROADBAND COMPETITION.** Rural Americans currently may choose between EchoStar's StarBand and DIRECTV's DIRECWAY for satellite Internet access service in the Ku Band. Post merger, the Ku Band satellite Internet business would become a monopoly. Additionally, the merger would crush the promise of future competition in the developing Ka Band satellite market.

## Housing Units with Access to Cable



Sources: The New York Times (National Cable and Telecommunications Association, Census Bureau, SKYRESEARCH), Satellite Broadcasting and Communications Association of America, Kagan World Media)